

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CV-220-RN

NICHOLE D. GRANT,

Plaintiff,

v.

**CHRISTOPHER CLARK, DDS, &
ASSOC., dba THE DENTAL CENTER
AT ZEBULON,**

Defendants.

Order

Defendants ask the court to impose sanctions on the Plaintiff under Rule 37 of the Federal Rules of Civil Procedure. (D.E. 40.) Defendants allege that Plaintiff engaged in two forms of misconduct: (1) she improperly removed copies of her former co-employees' time cards and copies of patient records containing information protected by the Health Insurance Portability and Accountability Act ("HIPAA") in September and October of 2013; and (2) she failed to respond adequately to Defendants' interrogatories and request for the production of documents.

Upon consideration of the Defendants' brief and the arguments made by the parties during a hearing conducted on March 5, 2015, the court DENIES the Defendants' Motion for Sanctions.

Defendants complain first that Plaintiff's improper removal of HIPAA-protected records "is worse than any failure to comply with a Court order or failure to respond to interrogatories" and should be sanctioned by striking her Complaint under F.R.C.P. 37. (D.E. 41; Def. Mem. at 4.) While the court agrees that Plaintiff's alleged removal of patient records, if true, is a serious

matter, it was conduct that took place before the onset of litigation. Rule 37(b) applies to a party's failure to comply with a court order during the course of discovery. Accordingly, Rule 37 does not give this court authority to sanction a party for conduct that took place before the filing of a complaint.

Defendants complain second of Plaintiff's failure to respond adequately to interrogatories and requests for documents. This issue has been resolved by the parties and is now moot.

For the foregoing reasons, Defendants' Motion for Sanctions is DENIED.

As the court has denied the Defendant's Motion for Sanctions, the Plaintiff's Motion for Extension of Time to Reply to Defendant's Motion for Sanctions (D.E. 60) is also DENIED as moot.

Dated: March 17, 2015

A handwritten signature in black ink, reading "Robert T. Numbers, II". The signature is written in a cursive, flowing style. The "R" is large and loops around the "o". The "T" is a simple vertical stroke. "Numbers" is written in a standard cursive, and "II" is at the end.

ROBERT T. NUMBERS, II
UNITED STATES MAGISTRATE JUDGE